LABOUR DEPARTMENT

The 27th July, 1968

No. 6549-2Lab-68/18379.—In supersession of Government Notification No. 5150-2Lab-68/14054, dated 6th June, 1968 and in exercise of the powers conferred by clause (a) of sub section (I) of section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948), the Governor of Haryana is pleased to extend the period of the Advisory Committee constituted to hold enquiries and advise the Government for fixing minimum rates of wages in respect of employment "Chemical and Distillery Industry",—*vide* notification No. 12115-2Lab-67/2365, dated 29th January, 1968, by 2 months more i. e. up to 28th September, 1968.

CORRIGENDUM

No. 6223-A-2Lab-68/18739.—In exercise of powers conferred by clause (a) of sub-section (I) of section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948), the Governor of Haryana is pleased to make the following amendment under caption "Employees representative" in Haryana Government Labour Department Notification No. 638-2Lab-68, dated 16th February, 1968, namely :—

"For President, Bata Shoe Works Union, Faridabad, Secretary Bata Shoe Workers Union, Faridabad shall be substituted."

The 29th July, 1968

No. 6299-3Lab-68/19267.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and management of M/s Usha Forging and Stamping, Mathura Road, Faridabad :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 129/67

between

SHRI MANVAR SINGH WORKMAN AND THE MANAGEMENT OF M/S USHA FORGING AND STAMPING, MATHURA ROAD, FARIDABAD

Present :—

Shri Karishan Lal, for the workman.

Shri S. L. Gupta with Shri A. J. S. Chadha, for the management.

AWARD

Shri Manvar Singh was in the service of M/s Usha Forging and Stamping, Mathura Road, Faridabad. He maintains that his services have been terminated without giving him any charge-sheet or a show-cause notice. This gave rise to an industrial dispute and the President of India in exercise of the powers confereed by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication, — *vide* Gazette Notification No. ID/FD/300C, dated 13th December, 1967.

Whether termination of service of Shri Manvar Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which the workman filed his claim statement and the management filed their written statement. The position of the management is that the claimant was guilty of certain acts of misconduct and so a charge-sheet dated 18th August, 1967, was offered to him but he refused to accept the same and started absenting himself from duties from 9th August, 1967, onwards. It is submitted that the management sent him another charges-heet dated 19th August, 1967 with which the charge-sheet dated 18th August, 1967 was also enclosed and the workman was asked to submit his explanation but neither he submitted any explanation nor did he report for duty. It is alleged that the management never terminated the services of the workmen and therefore no cause of action had arisen and the reference is bad in law. The following issues were framed :—

1. Whether the claimant started absenting himself from duties and his services have not been terminated by the management?

2. If the above issue is not proved whether the termination of the services of the claimant is justified and in order?

3. If not to what relief he is entitled?

Issues Nos. 1 and 2.—These issues are in a way inter connected and can therefore be conveniently discussed together. As already pointed out the case of the management is that the claimant Shri Manvar Singh started absenting himself from his duty of his own accord and so his name was struck off from the rolls and that the management did not terminate his service but no satisfactory evidence has been led to prove these facts. No responsible officer of the management has appeared in evidence to prove these facts. Shri Jagan Nath M. W. 1, Labour Officer and Shri Narash Kumar M. W. 2, Time-keeper only have appeared in evidence. The evidence of Shri Jagan Nath M. W. 1 has absolutely no value. According to the management the claimant refused to accept the charge-sheet tendered to him on 18th August, 1967 and he started absenting himself from 19th August, 1967, onwards. Shri Narash Kumar admits in his

evidence that he started working in the respondent concern only from the middle of October and therefore this witness can have no personal knowledge about this case. Shri Narash Kumar M. W. 2, Time-keeper simply says that he offered the charge-sheet Ex. M. 3 to the claimant but he refused to accept it and so he put his remarks on the copy of the charge-sheet and returned it to Shri Singal under whose signature it was issued. Shri Narash Kumar states that Shri Singal got another copy of the charge-sheet prepared and sent it to the claimant under postal certificate. Shri Narash Kumar also does not say that from his personal knowledge he could vouch safe that the claimant was not attending to his duties. He simply says that the entries in the attendance register show that the claimant was absent from 19th August, 1967, continuously. It is not clear why no notice under registered cover acknowledgement due was sent to the claimant that he has refused to accept the charge-sheet and that he was absenting himself from duty without leave. The claimant has appeared as his own witness and has stated that the management wanted him to work over time but he told them that his mother was ill and he had to show her to the doctor and for this reason he could not work over time on that date but the management got annoyed with him for this reason and when he reported for duty on the next date he was not given any work. The claimant says that no order in writing was given to him nor was given any charge sheet. The witness has not been even cross-examined with regard to this portion of his statement.

Shri Jagan Nath, Labour Officer has stated in his evidence that he attended the conciliation proceedings and informed the Conciliation Officer that the claimant could come back to duty if he so desired because no dismissal order had been issued to him. This position connot also be correct because we have seen from the evidence of Shri Narash Kumar, Time-keeper that the name of the claimant has been stuck off from the register from the month of September, 1967, onwards. So there could be no question of taking back the claimant on duty. He could only be re-employed. The claimant has denied that the management offered to take him back on duty during the course of conciliation proceedings. The Conciliation Officer has not been called in evidehce to prove that the management did offer to take back the claimant on duty but the claimant refused to do so. Hence after carefully considering the evidence I am of the opinion that it is not satisfactorily established that it was the claimant who abonded the service of his own accord and that his services were not terminated by the management. I therefore find both these issues in favour of the claimant.

Issue No. 3.—In view of my findings above it must be held that as the termination of the services of Shri Manvar Singh was not justified and in order, he is entitled to be reinstated with continuity of service and full back wages.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

Dated: 28th June, 1968.

No. 1194, dated 10th July, 1968.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employmen Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

Dated : 28th June, 1968.

No. 6300-3Lab-68/19408.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/S Goyal Industries Corporation, Mathura Road, Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 134 of 1967

between

SHRI HARI RAM, WORKMAN AND THE MANAGEMENT OF M/S GOYAL INDUSTRIES CORPORATION, MATHURA ROAD, FARIDABAD

Present :—

Shri Roshan Lal Sharma, for the workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Hari Ram was in the service of M/s. Goyal Industries Corporation, Mathura Road, Faridabad. The termination of his services gave rise to an industrial dispute and the President of India in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the

Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Gazette notification No. ID/FD 231B, dated 12th December, 1967.

Whether the termination of services of Shri Hari Ram was justified and in order ? If not, to what relief is he entitled ?

On receipt of the referrence usual notices were issued to the parties in response to which the workmen filed his statement of claim and the management filed their written statement, It is submitted on behalf of the management that the claimant absented himself from duty from 8th to 12th August, 1967 in the first instance and thereafter he reported for duty for two days i. e. 13th and 14th August, 1967. It is alleged that 15th and 16th August, 1967 were holidays and the factory was closed and thereafter the claimant did not attend to his duty. It is alleged that the management waited for him till 30th August, 1967 and he was marked absent during these days and as he failed to report for duty it was considered that he has left the factory of his own accord and consequently his name was struck off. The case of the workman on the other hand is that the management terminated his services without giving him any opportunity to show cause. The following issues which arose from the pleadings of the parties were framed on 12th January, 1968.

1. Whether the claimant absented himself from duty from 8th August, 1967 onwards and so his name was struck off ?

2. Whether the claimant has been throughout reporting himself for duty but was not, given any work ?

3. If the above issues are found in favour of the workman, whether the termination of services of Shri Hari Ram was justified and in order ? If not to what relief is he entitled ?

The case was adjourned to 7th February, 1968 for evidence. On the date fixed the parties prayed that there was a talk of compromise and requested for an adjournment. The case was accordingly adjourned to 23rd February, 1968 for evidence in case no compromise was effected. On the date fixed for evidence the management filed a further written statement taken up certain technical objections without even making formai prayer for the permission to amend the original written statement. Obviously no party has any right to file further pleadings without obtaining the permission of the Court and as already pointed out the management even did not care to file a formal application seeking this permission. After the evidence was closed the management gave an other application on the next day that they may be permitted to lead further evidence on the ground that the workmen in his evidence has said a number of things which had not been mentioned in his claim statement and therefore the management should be allowed to lead evidence in rebuttal. It has however not been pointed out in the application in what respect the workman in his evidence have gone beyond his pleadings. Both the aaplications therefore stand rejected. I now proceed to give my findings on the issues framed.

Issues Nos. 1 and 2.—These issues are interconnected and can conveniently be discussed together. The mangement have produed four witnesses in support of their case namely Shri Bhart Singh M. W. 1 Supervisor, Shri Sham Narain Jha, M.W. 2. Wage Clerk, Shri Mahash Kumar Sharma, M.W. 3, Fitter and Shri Hari Ram, M.W. 4, a workman. They are all employees of the respondent. I have carefully considered the evidence of these witnesses and am not satisfied with the evidence of the first three witnesses. The claiment has stated that he has been in the service of the respondent concern from the month of June, 1966 and he was getting Rs 135 P.M. This portion of his statement has not been challenged. The witness for the management want the Court to believe that for no rhym and reason the claimant took into his head to absent himself from duty without even informing the management as to why he did not want to continue in service, although he had been in their service for more than a year. Shri Bharat Singh, M. W. 1, supervisor states that it is his duty to mark the attendance of the workman whose list is supplied to him and that he sits at the Gate and goes on marking the presence of the workmen who report for duty and the others are marked absent or their names are secord off and if a new workman whose name is not mentioned in the list appears then his name is recorded in the sheet. The witnesses produced the attendance sheets marked Ex. M.W. 1/1—19 showing the presence of the workman from 7th August to 30th August, 1967. The witness says that the claimant was never wrongly marked absent and he was never turned out or refused entry in the factory. Shri Sham Narain M. W. 2 Wage Clerk states that he is also know as the attendance clerk and it is his duty to receive the at tendance sheets from the supervisor daily and to make entries in the attendance register. The witness produced the attendance register in which the claimant is shown to be absent from 8th August, 1967 to 12th August, 1967 and from 17th August, 1967 to 30th August, 1967. The evidence of Shri Sham Narain does not help us at all because he only duplicates the work of the supervisor Shri Bharat Singh and he simply copies the names of the persons whose persons or absence already marked by the Supervisor.

Shri Mahash Kumar Sharma, M. W. 3 is the fitter and Shri Hari Ram, M. W. 4, is the workman in the respondent concern. It is not the duty of either of them to maintain a record of the workman who attend to their duties. They are both expected to attend to their respective duties but still Shri Mahash Kumar, Fitter has gone out of his way to support the management. He states that the claimant was never refused entry in the factory nor wrongly marked absent. It is not possible to appreciate how the witness could truthfully make this statement. He is not expected to remain sitting at the gate and note the names of the workmen who are marked present and allowed to tnter and also to note the names of the workmen who remained absent. Shri Hari Ram M.W. 4 is a more truthfull witness. He has stated that he does not remember the date on which the claimant used to be present. He says that on one day the claiment working with him and he was marked present and he the claiment told him that his services have been terminated and that was prior to 15th August, 1967. He further states that the claimant once again came to the factory three or four days after 15th August, 1967 and no body prevented him from entering factory but he soon went away and he does not khow the reason. From the evidence of Shri Hari Ram it is clear that the version of the management that the claimant absented himself from duty after 8th August, 1967 to 12th August, 1967 and then from 17th August, 1967 to 30th August, 1967 without any Rhym and reason is not correct, because if

that had been so there would have been no occasion for him to tell his co-worker Shri Hari Ram N. W. 4 that his services have been terminated. The management did not make any request that the witness Shri Hari Ram has not spoken the truth in this regard and therefore he may be declared hostile and the management given permission to put question of the nature of cross examination to him.

The claimant Shri Hari Ram has appeared as a witness in support of his case he says that the respondent terminated his services without given him any charge-sheet. He says that he used to present himself for duty every day but he was not allowed to enter the gate. In my opinion his evidence appears to be correct. As already observed he joined the service of the respondent concern in June, 1966 and had put in more than one year service. Obviously he would not have liked to forego the benefit of service compensation etc. without any reason, It is not the suggestion of the management that the claimant got an offer of a better service somewhere else and for this reason he did not bother to remain in their service. Moreover if the claimant had actually absented himself without informing the management then they would have certainly given him a notice to show cause as why he was absenting himself from duty and why his name be not struck off but no such notice was given. Hence after carefully considering the evidence produced by the parties, I find both these issues in favour of the workman.

Issue No. 3.—In view of my findings above it must be held that the termination of the services of Shri Hari Ram was not justified and in order and he is entitled to be reinstated with continuity of service and full back wages. He is also entitled to Rs. 100/- as costs of the proceedings.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

Dated 28th June, 1968

No. 1193, dated the 10th July, 1968.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 28th June, 1968.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 6305-3Lab-68/19433.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and management of Municipal Committee, Faridabad:—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 2 of 1968

between

Shri Behari Lal, workman and the management of M/s Municipal Committee, Faridabad.

Present:—

Shri R. N. Roy, for the workmen.

Shri R. C. Sharma, for the management.

AWARD

Shri Behari Lal was in the service of Municipal Committee, N. I. T. Faridabad as a Keyman in the Water supply Department his services were terminated. This gave rise to an industrial dispute and the President of India in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—vide Government Gazette Notification No. ID/FD/206C/1173-78, dated 12th January, 1968.

Whether the termination of services of Shri Behari Lal was justified and in order ? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which the workman filed a statement of claim and the management filed their rejoinder to the same. On behalf of the workman it is submitted that he is a member of the Mercantile Employees Association which enroles workmen employed in various shops and other establishments and the object of this Association is to regulate the relationship between the workmen and the employees and to improve the conditions of the workmen. It is alleged that Shri Behari Lal was employed by the Executive Engineer, P. W. D. Public Health Division, Faridabad, as a Keyman on the maintenance and the operation of water-supply scheme Industrial Township, Faridabad, with effect from 1st August, 1963. The water-supply scheme was taken over by the Municipal Committee, Faridabad, on 1st April, 1965 and the services of Shri Behari Lal were transferred to the Municipal Committee. He was wrongfully and illegally retrenched on 30th June, 1967 withou

compliance with the mandatory provisions of section 25F of the Industrial Disputes Act, 1947. It is alleged that the workman was previously retrenched on 4th May, 1966, without compliance with the provisions of section 25F of the Industrial Disputes Act, 1947, but he was re-employed on 25th May, 1966, and he worked up to 30th June, 1967. He was again employed on 11th July, 1967 and worked from 11th July, to 14th July, 1967 and then a fresh letter of appointment was issued to him on 15th July, 1967, for a further term of three months but when he reported for duty he was refused duty. It is submitted that the retrenchment of the workmen on 4th May, 1966, and on the subsequent date without compliance with the provisions of section 25F of the Industrial Disputes Act, 1947, is illegal, void and inoperative. It was, therefore, prayed that the workmen may be ordered to be reinstated with continuity of service and full back wages.

On behalf of the Municipal Committee a number of preliminary objections have been raised. It is submitted that the function discharged by the Committee is not an industry as defined in the Industrial Disputes Act and its employees cannot be termed as workmen under the Industrial Disputes Act because no business, trade or manufacturing process or undertakings has ever been carried out by the Municipal Committee. It is alleged that the Committee more or less enjoys the legal powers of a local self Government and its functions are mainly sanitation, maintenance of roads and streets, street lights, fire brigade, collecting taxes and fees, regularisation of buildings constructed by the citizens and to approve their building plans, preventing encroachment on the Government land, etc. The reference is said to be bad in law on the ground that there is only an individual dispute between the Municipal Committee and its employee. Shri Behari Lal, but the Government has termed it as an industrial dispute between the Committee and its workmen. The reference is also said to be vague in so far as it is not made clear in what manner there has been termination of services and so far as the issue of the termination is concerned, it is not within the jurisdiction of this Court as per items of schedule 2 of the Industrial Disputes Act. The Association which have espoused the dispute and is representing the workman in this Court does not confine its membership to any particular industry and therefore, an objection has been raised that the dispute arised through this Association cannot be said valid. An objection has been raised to the jurisdiction of this Court on the ground that according to the workman he has been retrenched from service without compliance with the provisions of section 25F of the Industrial Disputes Act and the question whether the retrenchment is valid or not cannot be adjudicated upon by this Court. It is also submitted that there was no relationship of master and servant on 14th July, 1967, on which date according to the workman he has retrenched from service.

On merits it is pleaded that Shri Behari Lal was in the employment of P.W.D. and when the Tube-wells were taken over from the P. W. D. by the Municipal Committee in 1965, the services of Shri Behari Lal were also taken over but he was retrenched from service in January, 1966 and after the period of one month he was appointed as Chowkidar-cum-Mali on temporary basis on 5th February, 1966 and after that he never remained regular employment of the Committee. On the other hand it is alleged that he was working as a Badli worker on different kind of jobs and he used to get wages only for the days he worked and in this capacity he continued working up to June, 1967. On 15th July, 1967, an order was issued appointing him as an assistant driver at Rs 42.50 per month in the scale of Rs $42\frac{1}{2}-1-49\frac{1}{2}$ plus usual allowances on purely temporary basis for a period of three months with effect from the date on which the newly constructed tube-well in Ram Lila ground was taken over by the Municipality from the P,W.D., public Health Branch. It is alleged that the tube-well was handed over to the Committee after sometime but during this period some of the tube-wells under the control of the committee went out of order and the permanent drivers became idle and they were consequently sent to work on the tube-wells of Ram Lila ground, and there was no vacancy against which Shri Behari Lal could be employed and so his claim that he has been retrenched is, therefore, said to be totally wrong and he is not entitled to be reinstated.

The pleadings of the parties gave rise to the following issues :—

(1) Whether the reference is not valid because the claimant Shri Behari Lal was not a workman as defined in clause (s) of section 2 of the Industrial Disputes Act, 1947.

(2) Whether the reference is bad for the reasons mentioned in para No. 2 of the preliminary objection?

(3) Whether the claimant was working only as a Badli worker prior to 14th July, 1967 ?

(4) Whether the claimant was ordered to be employed as an Assistant Driver on temporary basis for the period of 3 months with effect from the date on which the newly constructed tube-well in Ram Lila ground was taken over by the Municipal Committee ?

(5) Whether the relationship of employer and employee did not exist between the parties on the date on which the claimant served a demand notice?

(6) If the above issues are found in favour of the claimant, whether the termination of the services of the claimant was justified and in order? If not to what relief he is entitled?

Issue No. 1.—The submission of the learned representative of the respondent is that a Municipal Committee is not an "Industry" as defined in clause 'J' of Section 2 of the Industrial Disputes Act and its employees cannot be considered to be "workmen" as defined in clause (s) of the said Act. It is submitted that the Municipal Committee more or less enjoys the powers of local Self Government and that it does not carry on any business, trade or manufacturing process or undertaking. It is submitted that its functions are mainly sanitation, maintenance of roads and streets, street lights, fire brigade, collecting taxes and fees, regularisation of building constructed by the citizens and to approve their building plans, preventing encroachments on Government land, etc. Reliance has been placed upon the latest authority of the Supreme Court reported in 1967-II-LLJ page 720

given in the case of Madras Gymkhana Club. It has been held that before the work engaged in by an employer can be described as an industry, it must bear the definite character of "trade" or "business" or "manufacture" or "calling" or must be capable of being described as an "undertaking" resulting in material goods or material service. The words undertaking has also been defined as "in business or in work or project which one engages in or attempts as an enterprise analogous to business or trade". It has been observed by the Lordship of the Supreme Court that "this is the test laid down in Banerjis case 1953-I-LLL page 195 and followed in Baroda Municipality case (1957-I-LLJ 8). Its extension in the Corporation case (1960-I-LLJ-523) was unfortunate and contradicted the earlier case".

It is submitted that the observations made by the Lordship of the Supreme Court in their latest pronouncement has a far reaching effect and it has to very great extent changed the connotation of the term "industry" as it was previously understood. It is submitted that before an undertaking can now be considered to be an industry it must be an enterprise analogous to business or trade and statutory functions performed by the Municipality cannot be included within the definition of the term "industry". Reliance has also been placed upon the authority cited as 1964-II-LLJ, 584 in which it has been held that drivers employed by the postal department to run its mail vans were not entitled to any protection under the Motor Transport Workers Act because the motor service maintained and run by the post office for carrying the mail from and to different post offices was not a motor transport undertaking because the maintenance and running of post office was not a "business". Reliance has also been placed upon an award given by the Presiding Officer of the Industrial Tribunal, Haryana, between the workmen and the management of "(1) Fire Officer, Haryana, Chandigarh. (2) Municipal Committee, N.I.T. Faridabad, and published in the *Haryana Government Gazette* dated 7th May, 1968, at page 321. In this case following the Supreme Court Authority given in the Madras Gymkhana Club case it has been held that the Fire Brigade activites carried on by the Municipal Committee would not fall within the ambit of the definition of the word "industry".

I have considered the submission of the learned representative of the Municipal Committee and have carefully gone through the authorities cited by him. In my opinion the authorities cited are all distinguishable. The Madras Gymkhan Club has been held to be the members self-serving institution and the sevices are to the members themselves for their own pleasure because amusement and so it is not an industry. In 1964-II-LLJ page 584 all that has been held is that maintenance add running of post office was not a business but it can not be said that the Municipal Committee or the post office do not render material service to the community at large or a part of such community with the help of its employees. While discussing the proposition that the undertaking must be analogous to business, trade or calling their Lordships of the Supreme Court in the Madras Gymkhana case have observed at page 726 that "activity need not necessarily be preceded by procurement of capital in the business sense nor must profit be motive. So long as relationship of employer and workmen is established with a view to production of material goods or material services, the activity must be regarded as an undertaking analogous to trade or business". Further in the last para of the second column at page 726 and at page 727 of said authority, it has been observed that "an activity systematically or habitually undertaken for the production or distribution of goods or for rendering material service to the community at large or a part of such community with the help of the employees is an undertaking. In this way the connection between trade and business on the one hand and undertaking on the other hand is established which seems to indicate that the expression "undertaking" must take its colour from the other expression. An industry is thus said to involve co-operation between employer and employees for the object of satisfying material human needs but not for one self nor for pleasure nor necessarily for profits." If these observations are applied to the present case the water-supply department of the Municipal Committee would fall within the definition of industry. Thus the contention of the learned representative of the respondent that after the pronouncement of their Lordships of the Supreme Court in the Madras Gymkhana Club case, the statutory functions performed by the Municipal Committee, i. e., sanitation, supply of electricity, water-supply, etc. would now be taken out of the ambit of the expression "industry" has no force. It has been held in the Madras Gymkhana Club case itself that "the definition of employer in the Industrial Disputes Act clearly shows that a local authority may become an employer if it carries on an industry. This means that a Municipality if it carries on an industry, if it indulges in an activity which may be properly described as industry, may be involved in an industrial dispute. It has been further observed that local bodies are primarily subordinate branches of Governmental activity. They function for public purpose but some of their activities may come within the calling of employers although the Municipalities may not be trading corporations. Local authorities take away a part of the affairs of Government in local areas and they exercise the powers of regularisation and subordinate taxation. They are political sub-divisions and agencies for the exercise of Government functions. But if they indulge in Municipal trading or business or have to assume the calling of employers, they are employers, whether they carry on or not business commercially for purpose of gain or profit".

The learned representative of the workman has rightly drawn my attention to the definition of "public utility service" as given in clause (n) of section 2 of the Industrial Disputes Act. According to sub-clause (iv) of clause (n), any industry which supplies power, light or water to the public would be public utility service. Section 12 of the Industrial Disputes Act lays down that a Conciliation Officer is bound to hold conciliation proceedings if any industrial dispute exists or is apprehended relating to public utility service and a notice under section 22 of the Act has been given. It has been rightly submitted that if the water-supply department and such allied departments are not held to be "Industry", then one of the main object of the Industrial Disputes Act that is preservation of harmonious relations between the management and the workmen in public utility services would be frustrated. Hence after carefully considering the submissions of the learned representative of the parties I am of the opinion that the water supply department of Municipal Committee would fall within the definition of the term "Industry" as given in clause 'j' of section 2 of the Industrial Disputes Act and the employees of this department would fall within the definition of the workmen as given in clause (s) of section 2 of the said Act. I find this issue in favour of the claimant.

Issue No. 2.—The reference is said to be bad in law because there is no dispute between the workman as a class on the one hand and the management on the other hand. It is submitted that there is only an individual dispute but Government has wrongly termed it as an industrial dispute. There

is no force in this contention because under section 2A of the Industrial Disputes Act if a workman is aggrieved by reasons of his discharge, dismissal, retrenchment or termination of services he can raise an industrial dispute even if no other workman or an union of workman is a party to dispute. It is now longer necessary that an industrial dispute arising out of the termination of the services of a workman must be espoused by any union and it is also not necessary that in the reference it must be stated in what manner the services have been termin ted. It is true that disputes relating to retrenchment and closure of establishments fall in the third schedule of the Industrial Disputes Act but under the proviso to clause (c) of section (1) of Section 10 of the Industrial Disputes. The appropriate Government if it so thinks fit can refer a dispute which relates to any matter specified in the third schedule to the Labour Court for adjudication if the dispute is not likely to affect more than 100 workmen. In the present case only one workman is concerned in the dispute and the reference has been made to this Court under the proviso to clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act and so this Court has jurisdiction to adjudicate upon this dispute. Thus the order of reference is not invalid for any of the reasbns mentioned in the preliminary objections detailed in the written statement filed by the respondent Committee. This issue is found in favour of the claimant

Issue No. 3.--The respondent committee has filed a statement showing the details of the period for which the claimant Shri Behari Lal had served the Committee from the date he was originally appointed on 19th May, 1963 up to 15th July, 1967. The representative of the claimant has admitted the correctness of the statement and it has been marked as Exhibit C. 1 for the purpose of reference. According to this record the claimant was employed from time to time as a Badli worker up to 15th July, 1967. This issue is accordingly found in favour of the respondent.

Issue No. 4.—It is admitted on behalf of the claimant that on 15th July, 1967 an office order was issued by which he was appointed as an Assistant Driver on a purely temporary basis for a period of three months only but no work could be given to him because some other tube-wells maintained by the Committee went out of order and the permanent drivers became idle and so there was no vacancy against which he could be employed. I, therefore, find this issue also in favour of the respondent.

Issue No. 5 and 6.--The submission of the learned representative of the respondent is that th service of the claimant came to an and end on 15th July, 1967 and since there was no vacancy agains which the claimant could be appointed so there was no relationship of master and setvant between the parties when the notice of demands dated 10th September, 1967 was served on the Committee.

The submission of the learned representative of the claimant on the other hand is that according to the details given in Exhibit C. 1 egarding the period for which the claimant has rendered service to the Municipal Committee, it is clear that the claimant had served the Committee for more than 240 days during the 12 months preceding the date on which his services stood terminated for want of work. It is, therefo e, submitted that in accordance with the provisions of section 25(C) of the Industrial Disputes Act, it must be held that the claimant was in continuous service for a period of not less than one year when he was retrenched by the employer and under section 25 F of the Industrial Disputes Act he could not be retrenched unless he had been given a one month notice in writing and paid compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six Months.

The learned representative of the management has submitted that the provisions of section 25-F of the Industrial Disputes Act do not apply to Badli workmen employed on purely temporary basis and against leave vacancies but no authority in support of this contention has been cited. The learned representative of the claimant on the other hand has relied upon a Supreme Court authority repoted in 1965-II-LLJ page 118. In this case the claimant was a Badli workmen and his employment was not continuous. There were number of breaks in his service. It was held that for the purpose of section 25F of the Industrial Disputes Act a workman who in a period of 12 calander months had actually worked for not less than 240 days shall be deemed to have completed one year of continuous service. It has been observed that the service for 240 days in a period of 12 calander months is equal not only to service for a year but is deemed to be continuous service even if interrupted and therefore though section 25F speaks of continuous service for not less than one year under the employer, both the conditions are fulfilled if the workman has actually worked for 240 days during the period of 12 calander months. I view of this authority it must be held that the services, of the claimant could not be retrenched without complying with the provisions of section 25F of the Industrial Disputes Act and since admitedly the provisions of this section have not been complied with, it must be held that the retrenchment of the claimant was not legal and in order. The provisions section 25F of the Industrial Disputes Act are mandatory and any retrenchment from service without complying with the said provisions is null and void. I, therefore, hold that the termination of services of the claimant was not in order and in the eye of law, he is still deemed to be in the service of the Committee.

Since according to the admission of the claimant himself, there is no post against which he can be employed, it is not possible to order his reinstatement on any post but he is entitled to get his wages till his services are terminated in accordance with law. I give my award accordingly. No order as to costs.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

Dated 14th June, 1968.

No. 1192, dated the 10th July, 1968

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employmen Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

Dated 14th June, 1968.